HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No.12421 OF 2005

Dated 16-11-2005

Between:

1. Medasani Ramesh Babu son of Late Nagabhushana Rao, aged about 50 years, resident of D. No.2-73, Tadigadapa village, Penamaluru Mandal, Krishna District.

Petitioners.

And:

1. The Sub Collector, Vijayawada, Krishna District and

others.

Respondents.

ORDER :

When the vacate stay petitions came up for hearing, both the parties have consented for disposal of the main writ petition. Hence the writ petition itself is taken up for hearing.

2. The writ petitioner challenges the order passed by the Sub-Collector, Vijayawada, Krishna District-1st respondent on an appeal filed by the respondents 3 and 4 herein against the endorsement dated 30-4-2005 issued by the Mandal Revenue Officer Penamaluru Mandal, Krishna District-2nd respondent.

3. The petitioner claims the property admeasuring Ac.4-81 cents under a registered will executed by his father on 02-10-1979. His father died in 1981. Some disputes cropped up between him and his mother which led to filing of criminal as well as civil proceedings. The mother of the petitioner claimed the property under an

unregistered will executed by his father on 24-2-1981. She executed a registered sale deed in favour of the respondents 3 and 4 in respect of the land in dispute on 04-09-2003. Thereupon, the petitioner filed O.S.No.1065 of 2003 for declaration of his title to the property and for consequential permanent injunction. The suit is pending trial. While so, the respondents 3 and 4 made an application before Mandal Revenue Officer basing on the registered sale deed executed by the mother of the petitioner for issuance of pattadar pass books/title deeds. The endorsement dated 24-3-2005 came to be issued by the Mandal Revenue Officer on their applications to the effect that no pattadar pass books can be issued in view of the pendency of the suit. Assailing the endorsement, the respondents 3 and 4 filed appeal before Sub-Collector, Vijayawada. The appellate-authority after hearing the respondents 3 and 4 herein set aside the endorsement issued by the Mandal Revenue Officer and directed the Mandal Revenue Officer to issue pattadar pass book and title deeds in accordance with the procedure of A.P. Rights in land and Pattadar Pass book Act, 1971. Assailing the order passed by the Sub-Collector, the petitioner has chosen to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue and respondents 3 and 4.

5. The learned counsel appearing for the petitioner submits that the petitioner already filed a suit against the respondents 3 and 4 and their vendor-his mother for declaration of title and for consequential permanent injunction and in that view of the matter, the Mandal Revenue Officer is justified in issuing the endorsement dated 24-3-2005. He further submits that the appellate authority, without issuing any notice on the appeal filed by the respondents 3 and 4, proceeded to pass order impugned in the writ petition and thus the order impugned in the writ petition is in violation of the principles of natural justice. A further submission has been made that since serious dispute exists with regard to the title over the property between the parties, the Mandal Revenue Officer is justified in issuing the endorsement on the application filed by the respondents 3 and 4 and the said endorsement ought not to have been interfered by the appellate authority. In support of his submissions, reliance has been placed on the decision in V. GOUTHAM RAO V. REVENUE DIVISIONAL OFFICER, JAGTIAL, KARIMNAGAR DISTRICT AND ANOTHER ().

6. The learned counsel appearing for the respondents 3 and 4 submits that the name

of their vendor appeared in the revenue records as pattadar and consequent on their purchase of the land, an application was moved before the Mandal Revenue Officer for mutating their names in revenue records as pattadars and for issue of the pattadar pass books and title deeds in their favour. He further submits that the direction of the Mandal Revenue Officer to the respondents 3 and 4 is beyond the scope of his jurisdiction and thus, the appellate authority is justified in setting aside the said direction. He referred Sections 4, 5 and 6 of A.P. Rights in Land and Pattadar Pass Books Act, 1971 in support of his submissions apart from placing reliance on the judgment of our High Court reported in R.S. MURTHY AND ANOTHER VS. JOINT COLLECTOR, EAST GODAVARI DISTRICT, KAKINADA AND OTHERS (). In the cited case, it has been held as follows:

> "When a person files an application for correction of pass book, he cannot be asked to file a Civil suit because some third party has raised the question of adverse possession therein. It is true that the revenue authorities cannot decide the questions of title and possession, but subject to any decree or order that may be passed in a civil suit, the revenue authorities should exercise their statutory power."

7. A fact remains that the appellate authority has not issued any notice to the petitioner before passing the order impugned in the writ petition. On that ground alone, the order impugned in the writ petition is liable to be set aside. Added to that, there is a serious title dispute between the petitioner and his mother, from whom, the respondents 3 and 4 claimed to have been purchased the property. This dispute is required to be resolved by the Civil Court. The petitioner has already filed a suit for declaration of his title, wherein the respondents 3 and 4 are parties. It has been held by our High Court in V. GOUTHAM RAO V. REVENUE DIVISONAL OFFICER 1st cited that whenever there is a serious dispute of title or claims of any rival title, it would not only be proper for the authorities to refrain from proceeding with the enquiries as such under the provisions of the Act but also pragmatic for the parties to approach the Civil Court for establishing their right, title and interest of whatsoever nature.

8. Since the civil suit is already pending, wherein the petitioner and the respondents 3 and 4 are parties, the order passed by the Mandal Revenue Officer is quite legal and proper. The appellate authority is not justified in interfering with the endorsement dated 30-4-2005 issued by the Mandal Revenue Officer on the

applications made by the respondents 3 and 4 for issuance of pattadar pass books and title deeds.

9. Accordingly, the writ petition is allowed. No costs.

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Justice B.SESHASAYANA REDDY

Date : 16th November, 2005.

Dvs

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